

(f) *Proceeding* means an adversary adjudication as defined above.

(g) *Director* means the Director of the United States Office of Government Ethics.

§ 2610.102 Purpose.

The Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings ("adversary adjudications") before the Office of Government Ethics. An eligible party may receive an award when it prevails over the Office unless the Office's position was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Office will use to make them.

§ 2610.103 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Office of Government Ethics on or after October 1, 1989, which is the date the Office became a separate executive agency. Prior to October 1, 1989, the Office was part of the Office of Personnel Management. Any adversary adjudication pending or commenced before October 1, 1989, and not finally disposed of by that date, is governed by the rules and policies implementing the Equal Access to Justice Act as adopted by the Office of Personnel Management.

§ 2610.104 Proceedings covered.

(a) This part applies to adversary administrative adjudications conducted by the Office of Government Ethics. When all other conditions in the Act and in these rules are met, the types of proceedings to which this part applies are adversary administrative adjudications conducted by the Office under:

(1) The Debt Collection Act of 1982, 5 U.S.C. 5514;

(2) The Contract Disputes Act of 1978, 41 U.S.C. 605, 607;

(3) The Ethics in Government Act of 1978, section 402(f)(2), 5 U.S.C. app., and subpart E of part 2638 of this chapter.

(b) The Office's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in the proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered matters.

§ 2610.105 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2,000,000;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7,000,000, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; and

(5) any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than \$7,000,000 and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the underlying proceeding was initiated. For appeals of decisions of contracting officers made pursuant to section 6 of the Contracts Disputes Act of 1978, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.